

History

In February, 2008, a representative from the Intertribal Council of Arizona (ITCA) placed a request before the Arizona Department of Health Services (ADHS) Director's meeting of the three Indian Health Service (IHS) Area Directors concerning a critical need for training and informational outreach to the tribes and the Regional Behavioral Health Authorities (RBHAs) concerning the process of court ordered treatment for American Indians. Mr. Eddy Broadway, former Director of the Division of Behavioral Health Services (DBHS) assigned the Tribal Contract Administrator to work, in conjunction with ITCA, on addressing this need. An interagency work group was identified as the mechanism for addressing this training need. The Involuntary Commitment Work Group was comprised of ADHS/DBHS, Arizona State Hospital (AzSH), the Office of the Attorney General, Arizona Health Care Cost Containment System (AHCCCS), and the Intertribal Council of Arizona (ITCA) staff.

The first meeting was convened on April 7, 2008 at ITCA. It was determined that in order to develop a training tool, the existing court ordered treatment (COT) process for American Indians needed to be reviewed and the issues identified in order to focus training.

On August 28, 2008, the ITCA in partnership with ADHS convened a tribal forum concerning *Tribal Involuntary Commitment Issues in Arizona*. The resulting comments from the tribes provided a very negative picture of American Indians awaiting needed admission to AzSH and were being kept in tribal jails without professional behavioral health services for months on end. It became very clear that the tribal representatives felt that the State was very remiss in addressing this disparity in the provision of entitled and critically needed behavioral health services to American Indians.

A second forum sponsored by ADHS/DBHS, designed for the RBHAs, was held on March 5, 2009 under the theme: *The Involuntary Commitment Process for American Indians: Challenges and Solutions*. This forum offered an opportunity to present both the history of Tribal Involuntary Commitment law and procedures as well as a chance to discuss the issues identified by the tribes and to hear from the RBHA staff the questions and issues faced by those working with the Tribes in the area of Court Ordered Treatment and Involuntary Commitment.

Unique Characteristics of the Behavioral Health System for American Indians -

The Arizona managed behavioral health care system is "carved out" of AHCCCS and the administration of the behavioral health care system to Title XIX and XXI enrolled beneficiaries is contracted to the ADHS/DBHS. The ADHS/DBHS in turn contracts with four Regional Behavioral Health Authorities (RBHAs) and three Tribal Regional Behavioral Health Authorities (TRBHAs) to provide behavioral health services in designated geographic service areas (GSAs) or tribal reservations. Eligible and enrolled tribal members residing on a reservation of a tribe with a TRBHA are to receive behavioral health services from that TRBHA and eligible and enrolled tribal members

residing on a reservation within a RBHA GSA are to receive covered behavioral health services from RBHA providers.

The legal right of American Indians under Federal law to have a “choice” between enrollment in a state behavioral health plan (RBHA or TRBHA) and the AHCCCS American Indian Health Program (Fee for Service plan and formerly known as the AHCCCS Indian Health Service Plan) also compounds the lack of understanding of how American Indians can access behavioral health services

This is particularly complicated because in the state system the patient is enrolled with AHCCCS and eligible for behavioral health services prior to the court order process. Under [ARS § 12-136](#), the court order is entered prior to enrollment. The person court ordered to the AzSH is generally NOT enrolled with the RBHA, and has generally received limited or no behavioral health services at a local level. AzSH, upon receipt of the court ordered American Indian patient often concludes that the American Indian patient can be stabilized in a less restrictive alternative setting. However, American Indian patients are often left to languish in a tribal jail for long periods with minimal or no behavioral health services.

Historic issues of tribes and tribal members receiving services in the AZ Behavioral Health System

Various issues serve as barriers to accessing behavioral health care in the Arizona behavioral health care system. These include but are not limited to the following:

- Reluctance to enroll in another health care system for fear of irrevocably losing health care benefits American Indians receive under the Federal Indian Health Services (IHS). Note: Eligible American Indians can switch between health care plans and the IHS fee for service plan at will.
- American Indian lack of familiarity with a non-IHS health care delivery system and the perceived lack of culturally sensitive and/or appropriate behavioral health care services are further barriers to accessing services under the Arizona behavioral health care system.

Recent trends in Court Ordered Treatment of American Indians

In 2008 there have been increasing Court Ordered Treatment (COT) direct admissions to the AzSH bypassing the RBHA screening and evaluation processes. Tribes have identified arguments countering local mandatory treatment requirements citing the lack of RBHA services on Indian reservations and/or RBHA refusals to enter into agreements to provide services on Indian reservations. Tribes have made persuasive and successful arguments in state courts obtaining “domestication” of their tribal court orders for “direct admissions” to the AzSH. The AzSH, under the advisement of legal counsel, are honoring these court ordered admissions which bypass the RBHA procedural processes. This increase in COT direct admissions to AzSH has created additional issues in the COT processes of American Indians.

In 2009 and as a result in part of the work of this group, Arizona tribes and the RBHAs have begun to negotiate and sign Letters of Agreement (LOA). These LOA's allow RBHAs the permission to enter Tribal lands and communities to deliver the services set out while creating a partnership to deliver quality and culturally appropriate services that follow all tribal laws and ordinances. (To view the Letters of Agreement, see the web page link titled: [Links to other resources](#))

Activities Scheduled to Work Toward Proposed Resolutions

As a result of all of the above described activities, the workgroup has initiated planning and implementation of the following activities:

1. Involuntary commitment training sessions held in Fall 2009 appropriate for tribal behavioral health programs for the Tribes, TRBHAs and RBHAs, sponsored by DBHS, AzSH and ITCA based on information gathered and gleaned from meetings and forums held with the various groups directly and indirectly involved in the Involuntary Court Order process for American Indians.
2. Design and launch of the Tribal Court Procedures for Involuntary Commitment, *Information Center* webpage located on the ADHS/DBHS website to go live in Fall 2009. The webpage will be updated and kept current as a source for contacts, legal information and training updates in the Tribal Involuntary Commitment process.
3. The work group, in conjunction with tribal stakeholders, will develop and recommend strategic behavioral health system changes to improve access to and continuity of behavioral health care for American Indians at the State Wide Tribal Behavioral Health Forum scheduled for Winter 2010.